

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT  
★ DEC 14 2009  
P.M. (S)  
TIME A.M. (S)

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MARK GAFT,

Plaintiff,

- against -

TRANSUNION, EXPERIAN,

Defendants.  
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**BLOOM, United States Magistrate Judge:**

After the Court granted in part and denied in part defendant's motions to dismiss and for summary judgment, see document 44, the Court scheduled two Fed. R. Civ. P. Rule 16 pretrial conferences in this matter. Plaintiff failed to appear at both conferences and has failed to contact the Court or defendants' counsel. The Court's November 13, 2009 Order specifically warned plaintiff that I would recommend that his case should be dismissed if he failed to appear at the conference on December 10, 2009. Plaintiff did not appear. Accordingly, it is respectfully recommended that this case should be dismissed.

#### BACKGROUND

Plaintiff originally filed this *pro se* action on February 7, 2007. On September 29, 2009, the Court granted in part and denied in part defendants' motions to dismiss and for summary judgment. The Court scheduled a status conference for November 10, 2009 at 3:00 p.m., however, plaintiff failed to appear for the conference and did not contact defendants' counsel or the Court. The Court issued an Order rescheduling the conference for December 10, 2009 at 12:30 p.m. and warned plaintiff that if he did not timely appear at the December 10, 2009 conference, the Court would dismiss the case. (Document 54.) Plaintiff again failed to appear on

C/m

December 10, 2009. Defendants' counsel arrived on time and was prepared to proceed at both conferences. Moreover, plaintiff has not contacted the Court. Accordingly, it is respectfully recommended that plaintiff's case should be dismissed.

### **DISCUSSION**

Rule 16(f) of the Federal Rules of Civil Procedure provides: "[o]n motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney . . . fails to appear at a scheduling or other pretrial conference; . . . or fails to obey a scheduling or other pretrial order . . . ." Under Rule 37(b)(2)(A)(v), the Court may dismiss the complaint for a party's failure to comply with a Court Order. See Federal Rule of Civil Procedure 37(b)(2)(A) ("[T]he court where the action is pending may issue further just orders. They may include the following: . . . (v) dismissing the action or proceeding in whole or in part."). The sanction of dismissal "may be imposed even against a plaintiff who is proceeding *pro se*, so long as warning has been given that noncompliance can result in dismissal." Valentine v. Museum of Modern Art, 29 F.3d 47, 49 (2d Cir. 1994).

The Court warned plaintiff that this action would be dismissed if he failed to appear for the December 10, 2009 conference. Plaintiff should not be afforded unlimited chances to obey the Court's Orders. Plaintiff has failed to attend Court conferences despite the Court's explicit warning that his case would be dismissed if he failed to appear.


### **CONCLUSION**

Accordingly, it is recommended that plaintiff's action should be dismissed pursuant to Fed. R. Civ. P. 16(f) and 37(b)(2)(A)(v).

## **FILING OF OBJECTIONS TO REPORT AND RECOMMENDATION**

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital District Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Secretary of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.



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LOIS BLOOM  
United States Magistrate Judge

Dated: December 11, 2009  
Brooklyn, New York